In the High Court of Judicature at Madras
Dated: 23-01-2009
Coram:
The Honourable Mr.Justice M.JAICHANDREN

W.P.No.34966 of 2003

R.S.Rangaraj .. Petitioner.

Versus

1. The Commissioner of Handlooms and
Textiles, Kuralagam IInd Floor,
Chennai-108.

2.The Board of Directors,
rep. By its Presiding and other Directors,
E.H.29, Bhavani Weavers
Co-operative Society Limited,
1049, Main Road, Bhavani-638 301,
Erode District, Tamil Nadu. .. Respondents.

Prayer: Petition filed seeking for a writ of Certiorarified Mandamus, to call for the records in Rc.No.49463/99/G1, dated 28.3.2003, on the file of the first respondent confirming the orders, dated 19.9.2000, quash the same and direct the respondents to reinstate the petitioner with full backwages.

For Petitioner : Mr.A.Thiagarajan

For Respondents : Mr.P.Muthukumar
Government Advocate (R1)

Mr.P.S.Sivashanmuga Sundaram (R2)

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

2. This writ petition has been filed praying for a writ of Certiorarified Mandamus to call for the records in Rc.No.49463/99/G1, dated 28.3.2003, on the file of the first respondent, confirming the orders, dated 19.9.2000, and quash the same and to direct the respondents to reinstate the petitioner in service, with full backwages.

3. It has been stated that the petitioner had started the Bhavani Weavers' Cooperative Society and he was the President of the said Society, from 18.8.76 to 24.4.78. Thereafter, the then Board of Directors had appointed the petitioner as an employee, on 25.4.78, based on his satisfactory performance. Later, he was appointed as the manager of the Society. However, on 22.12.89, the

President of the society had issued a charge memo making certain allegations against the petitioner. Based on the charge memo, a domestic enquiry had been conducted . The petitioner had submitted his explanations for the charges levelled against him. However, without considering the explanations submitted by the petitioner the President/Special Officer of the society had dismissed the petitioner from service, on 9.4.90. Challenging the said order of dismissal the petitioner had filed an appeal before the Board, on 4.5.90. The said appeal had not been considered by the Board for 10 long years, in spite of several representations having been made by the petitioner for the early disposal of the appeal. Therefore, the petitioner had approached this Court by way of a writ petition to direct the Board to dispose of the appeal, dated 4.5.90, on merits, after giving due opportunity to the petitioner. Pursuant to the directions issued by this Court the Board had passed an order, dated 19.9.2000, confirming the earlier order of dismissal, dated 9.4.90. Challenging the said order, dated 19.9.2000, the petitioner had filed a revision before the first respondent. The first respondent had confirmed the order of dismissal, by an order, dated 28.3.2003. In such circumstances, the petitioner had preferred the present writ petition before this court, under Article 226 of the Constitution of India.

3. In the counter affidavits filed on behalf of the respondents it has been stated that the second respondent Society had been registered, on 31.7.76, and had started functioning from 18.8.76. The writ petitioner was the President of the Society from its inception, till 24.4.78. Thereafter, he became the manager of the Society. As the manager of the Society he had various duties and responsibilities, including being in-charge of dyes and chemicals. During the month of June, 1983, based on certain complaints made against him, the Board of Directors had initiated an enquiry. While the enquiry was pending the petitioner had filed a false petition before the District Munsif court at Bhavani stating that he was obstructed from working in the society. The suit in O.S.No.212 of 1983 had been dismissed, on 19.4.86, for default. Thereafter, the petitioner had not pursued the said suit.

4. It has been further stated that the petitioner had stayed away from duty on his own volition, with effect from 1.7.83. He had approached the Labour Officer, Erode, for conciliation. He had turned up for work, on 7.7.83, for stock taking. He was never obstructed from carrying on his duties. In spite of the request of the second respondent the petitioner had not attended the office. The Labour Officer had come to the conclusion that, though the management of the second respondent Society had invited the petitioner to attend to his duties, the petitioner had voluntarily stayed away from work. After the conciliation had failed the Labour Officer had filed a failure report to the Government.

5. Thereafter, the petitioner had raised an industrial dispute before the Labour Court, Coimbatore. Despite the repeated requests made by the management of the second respondent Society the petitioner had attended work only, on 15.6.1988. Even after his re-joining he was irregular in his attendance. The dismissal of the petitioner from service by an order, dated 9.4.90, had nothing to do with the award of the Labour Court, Coimbatore, made in I.D.No.99 of 1984. The dismissal of the petitioner from service is related to the charge memorandum, dated 22.12.89. Since the petitioner had failed to submit his explanation a domestic enquiry had been ordered, after intimating the petitioner, on 6.1.90. On the request made by the petitioner, the domestic enquiry had been completed, on 16.2.90. Ample opportunities had been given to the petitioner and he had also cross examined the witnesses of the management of the second respondent Society. The findings of the enquiry officer, dated 10.3.1990, had been submitted to the management of the second respondent Society. Thereafter, a second show cause had been issued to the petitioner, vide notice, dated 13.3.90. After having received the notice and without submitting his explanation, he had requested for copies of the list of witnesses, as well as the translation of the findings of the domestic enquiry report, in Tamil. A suitable reply has been issued, on 22.3.90. The petitioner had submitted an explanation, on 8.4.90. Not being satisfied with the explanation submitted by the petitioner he had

been dismissed from service, with effect from 9.4.90, based on the grave charges levelled against him. After keeping quiet for nearly 15 months the petitioner had submitted an application to the Assistant Director of Handlooms and Textiles, Erode, for which the Society had submitted a reply, on 13.11.91, resisting the request of the petitioner. Again the petitioner had submitted a representation, dated 9.12.91, to the Assistant Director, for which the second respondent Society had sent a suitable reply, on 20.3.92. Even thereafter, the petitioner had continued to submit representations. Later, he had come before this Court and had misrepresented as though he had filed an appeal, dated 4.5.90, before the Board of the Directors of the second respondent Society. Further, the petitioner had submitted representations, on 7.8.97 and 15.9.97, requesting for his reinstatement in service. The Assistant Director by his letter, dated 3.10.97, had informed the petitioner that his request was time barred and that he cannot be reinstated in service. Aggrieved by the said order he had preferred a revision petition, before the Director of Handlooms and Textiles at Chennai. Based on the direction issued by this Court in W.P.No.9329 of 1998, the Director of Handlooms and Textiles at Chennai, had passed a final order in the revision petition, dated 22.6.98.

6. The orders passed by the Assistant Director of Handlooms and Textiles, Erode, vide his proceedings Na.Ka.No.13830/95 E, dated 3.10.97, and the Director of Handlooms and Textiles at Chennai, dated 20.6.98, had been set aside by an order made in W.P.No.9329 of 1998, directing the second respondent Society to dispose of the appeal filed by the petitioner, on 4.5.90, before the Board of Directors, within three months from the date of receipt of a copy of the said order, after giving opportunity to the petitioner, by complying with the principles of natural justice. Since no appeal was pending before the Board of Directors of the second respondent society, as stated by the petitioner, the Society had filed a revision petition before this Court and it had been numbered as Review Petition No.3 of 2000, in W.P.No.9329 of 1998. This Court had disposed of the review petition, on 6.7.2000, with a direction to the writ petitioner to submit a copy of the said appeal, dated 4.5.90, before the Board of Directors of the second respondent Society, within two weeks from the date of receipt of a copy of the order passed by this Court.

7. In view of the said directions issued by this Court, the writ petitioner had submitted a copy of the appeal, dated 4.5.90, and it had been received by the second respondent Society, on 25.7.2000. After having received the representation, dated 21.7.2000, of the writ petitioner, on 25.7.2000, the Board of Directors had formed a sub-committee of three directors, including the President, to enquire into the appeal, vide Boards' Resolution No.1, dated 19.9.2000. The President of the Society had issued several notices to the petitioner fixing the dates of hearing of the sub-committee. The petitioner had not appeared for several hearings before the sub-committee. However, the petitioner had appeared for the hearings of the sub-committee, on 4.9.2000 and 12.9.2000. On completion of the enquiry the sub-committee had submitted a report, dated 14.9.2000. The said report had been placed before the Board of Directors, on 19.9.2000. Based on the report the Board of Directors of the second respondent Society had resolved to confirm the order of dismissal, dated 9.4.90, issued against the petitioner. The said decision of the Board of directors had been communicated to the petitioner, vide the President's letter, dated 19.9.2000. Aggrieved by the said order, the petitioner had preferred a revision petition, under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, before the first respondent herein. By an order, dated 28.3.2003, the first respondent had confirmed the orders, passed by the Board of Directors, dated 19.9.2000, confirming the order of dismissal passed against the petitioner, on 9.4.90.

8. It has been further stated that the charges levelled against the petitioner were grave in nature and the said charges had been proved beyond doubt. The principles of natural justice had been fully complied with and therefore, the claims made by the petitioner are devoid of merits. Further, the petitioner had come before this Court with unclean hands making a false representation as though he had filed a appeal before the Board of Directors, on 4.5.90. The Special By-Law No.10(a) relating

to the service conditions of the employee of the second respondent provides for the constitution of the sub-committee to enquire into the appeal filed by its employees. The report of the sub-committee is self-explanatory. Proper reasons have been given by the authorities concerned while passing the impugned orders. In such circumstances, the writ petition is liable to be dismissed.

9. The main contention of the learned counsel appearing for the petitioner is that the impugned order, dated 28.3.2003, passed by the first respondent, is in violation of the principles of natural justice. For all the four charges levelled against the petitioner, he had submitted his explanation. However, without considering the same the petitioner has been punished by an order of the President/Special Officer of the second respondent Society, dismissing him from service. The petitioner has been victimised based on extraneous reasons, which had no connection with the duties which were to be performed by the petitioner. The reasons given by the respondents while passing the impugned orders are devoid of merits and they are biased in nature. The copies of the documents requested by the petitioner had not been given to him. The translation of the enquiry report had also not been furnished to the petitioner. Sufficient opportunity was not given to the petitioner to defend himself, both during the enquiry and thereafter. The impugned orders have been issued by the respondents without jurisdiction and they are liable to be dismissed, as being illegal and void.

10. Per contra the learned counsel appearing on behalf of the respondents had submitted that the charges levelled against the petitioner were grave in nature and therefore, the petitioner had been dismissed from service, by an order of the President/Special Officer, dated 9.4.90. The claims made on behalf of the petitioner that he was not given sufficient opportunity to put forth his case is not sustainable as he was afforded necessary opportunities to defend himself. The petitioner has come before this Court with unclean hands. The impugned orders passed by the respondents are in accordance with law and therefore, the contentions raised on behalf of the petitioner are devoid of merits.

11. In view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the reliefs, as prayed for by the petitioner in the present writ petition.

12. It has not been shown by the petitioner that he was not given an sufficient opportunity to defend himself, either during the enquiry or thereafter. It has not been shown that substantial prejudice had been caused to him by the non-furnishing of the translated version of the enquiry report, in Tamil. From the records available, it is clear that the respondents have followed the procedures established by law in conducting the enquiry into the charges levelled against the petitioner. Further, sufficient reasons have been given by the authorities concerned, while passing the orders, confirming the dismissal of the petitioner from service. In such circumstances, the writ petition is liable to be dismissed. Hence, it is dismissed. No costs.

csh